STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company	**:**	
d/b/a AmerenCILCO	**:**	
Central Illinois Public Service Company	**:**	
d/b/a AmerenCIPS	**:**	
Illinois Power Company	**:**	**10-0568**
d/b/a AmerenIP	**:**	
	:	
Verified Petition for Approval of	**:**	
Integrated Electric and Natural Gas	**:**	
Energy Efficiency Plan.	**:**	

ORDER ON REHEARING

DATED: May 24, 2011

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By the Commission:

I. INTRODUCTION

On September 30, 2010, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP ("Ameren"), filed a Petition seeking approval of its Electric Energy Efficiency and Demand-Response and Natural Gas Energy Efficiency Plan ("Petition"), pursuant to Section 8-103(f) and 8-104(f) of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq. On December 21, 2010, the Commission entered an Order in this proceeding granting conditional approval to the proposed electric energy efficiency and demand response and natural gas energy efficiency plan, subject to Ameren making a compliance filing of a revised plan adopting the modifications found appropriate in the Order.

On January 20, 2011, The Environmental Law and Policy Center ("ELPC") filed an Application for Rehearing, requesting rehearing on the proper method of calculating the appropriate spending limit for Ameren's gas energy efficiency programs. On February 9, 2011, the Commission granted rehearing on this issue. Based on an agreed schedule, Staff of the Illinois Commerce Commission ("Staff"), Ameren, ELPC, and the People of the State of Illinois ("AG") filed Briefs on this issue on March 10, 2011, and Reply Briefs on March 17, 2011. A Proposed Order was served on the parties. Briefs on Exceptions were filed by Staff, Ameren, ELPC, and the AG. Reply Briefs on Exception were filed by Staff and Ameren. A Joint Reply Brief on Exceptions was filed by the AG and ELPC.

II. ISSUE ON REHEARING

The Order in this proceeding set the spending limit for Ameren's gas energy efficiency programs in the amount endorsed by Ameren and Staff, which excluded commodity charges paid to non-certified alternative gas suppliers for purposes of calculating the natural gas spending limit under Section 8-104(d) of the Act.

A. Ameren

Ameren states that ELPC argued in its Application for Rehearing that the Commission somehow limited the definition of "retail customer," as that term is used in Section 8-104(d), to exclude large transportation customers. However, Ameren opines that a review of the record and briefing in this docket reveals that when the Commission accepted Ameren and Staff's agreed-to natural gas spending limit, it did no such thing.

Ameren notes that nowhere in the final Order does it state that the term "retail customer" should exclude transportation customers with respect to the spending limit, and states the testimony filed in this docket has been about explaining how a transportation customer pays for delivery service and gas, not excluding those customers altogether from the spending limit calculation. As explained by Ameren witness Ryan Schonhoff, transportation customers take delivery service from Ameren, but take gas supply from a third party (non-Ameren) supplier, thereby paying two different charges to two different entities: (1) a delivery charge paid to Ameren; and (2) a commodity charge paid to an alternative gas supplier for the gas. Mr. Schonhoff explains that when Ameren calculated the natural gas spending limit by multiplying retail revenue by 2%, this calculation included the amounts paid by transportation customers for delivery service charges. Thus, Ameren argues that rather than excluding transportation customers under the provisions of the Act, Ameren included them when calculating the spending limit.

Ameren submits that the real question with respect to the calculation of the natural gas spending limit is whether the Act requires that both the delivery charges paid by transportation customers to Ameren and commodity charges paid by transportation customers to alternative gas suppliers be a part of the spending limit calculation. In testimony and briefing, Ameren states it took the position that the Act did not require any commodity charges be included in the spending limit calculation, while Staff took the position that the Act required those commodity charges paid to certified alternative gas suppliers (i.e., those who sell gas to residential and small commercial customers) be included in the calculation. Ameren argues that ELPC, without having put in any evidence on this issue, nor taking a position in its Initial Brief, belatedly raised in its Brief on Exceptions that the Act requires all commodity charges paid by transportation customers be included in the calculation, including those paid to wholesalers not certified by the Commission, and urged the Commission to require Ameren to recalculate its natural gas spending limit.

Ameren argues that regardless of whether the Commission agrees with Ameren or Staff's interpretation of the statute (an issue which could, but does not need to, be resolved at this time), an argument that the Commission incorrectly approved Ameren's natural gas spending limit would be both unfounded and incorrect under either interpretation.

To the extent the Commission agrees with Ameren's interpretation of the Act, any argument that the commodity charges collected by any alternative gas supplier be included in the spending limit must fail. Ameren notes that the Act requires that "a natural gas utility shall limit the amount of energy efficiency implemented . . . by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service . . . ." 220 ILCS 5/8-104(d). Thus, Ameren asserts the Act modifies the "amounts paid by retail customers" to exclude any costs paid by retail customers that are not "in connection" with the natural gas service provided by Ameren. Ameren argues that the delivery service that Ameren provides to transportation customers does not include the sale of unregulated gas as a commodity, and the sale of gas is not the sale of a service, but rather the sale of a good. Ameren states that the delivery service revenues from transportation customers were included in the natural gas spending limit calculation, but the revenues from third party commodity sales were properly excluded. Under the language of the Act, Ameren opines that all commodity charges – which deal with the sale of gas by a third-party gas supplier and are not "in connection with delivery service" – should be excluded from the spending limit calculation.

Ameren states that should the Commission agree with Staff's interpretation of the Act, then the Commission still correctly approved the natural gas spending limit agreed to by Ameren and Staff, which excluded wholesale commodity charges paid to non-certified alternative gas suppliers. As Staff explained in its Initial Brief, the legislative history clearly supports excluding the wholesale commodity charge paid to non-certified alternative gas suppliers, and for purposes of calculating the natural gas spending limit, the cost of the gas that is purchased by the user at wholesale will not be included by the utility when calculating its charge to customers.

Ameren notes that while some may argue that this exchange only evidences an intent to exclude wholesale commodity purchases and does not apply to transportation customers who are considered retail customers under the Act, this misconstrues the legislative history and misses the point that a retail customer can still make a wholesale commodity purchase. Staff noted that the House debate establishes that gas purchases from the utility and from certified alternative gas suppliers are to be included in the computation of charges, leaving out "wholesale" purchases, which, in context, can only mean non-certified alternative gas suppliers. Therefore, Ameren asserts that even if the Commission endorses Staff's interpretation of the legislative history and the Act, only commodity charges for gas sold by the utility or certified alternative gas suppliers should be included in the spending limit.

Ameren states that while ELPC argues that the Proposed Order in Docket No. 10-0564, the North Shore Gas Company and The Peoples Gas Light and Coke Company energy efficiency docket ("Peoples/North Shore") stated that the "key" factor in determining which customers are retail customers is "whether the customer uses the commodity or resells it," this is not inconsistent with the Commission's decision in this docket. Ameren explains that the issue is not whether transportation customers are retail or wholesale customers, but rather whether the commodity charge paid to non-certified alternative gas suppliers by transportation customers is a charge that should be included in the spending limit calculation. Ameren states that any language in the Proposed Order in another docket about determining which customers are retail customers is irrelevant, as the Commission already treated transportation customers as retail customers in this docket for purposes of computing both the savings goals and spending limit. Ameren argues that references to the proposed definition of "retail customers" in other dockets only serve to confuse the real issue.

Ameren submits that instead of arguing whether the commodity costs paid by Ameren transportation customers to non-certified alternative gas suppliers are wholesale commodity costs, ELPC and AG continue to create needless confusion with their arguments over the proper customer classes to be included in the natural gas spending limit calculation. While the AG and ELPC argue that transportation customers are retail customers rather than wholesale customers, Ameren opines that this argument misses the point that a retail customer can still make a wholesale commodity purchase. In fact, Ameren avers that the Commission can disregard the large portions of ELPC's and AG's briefs devoted to arguing why transportation customers should be treated as retail customers under the spending limit provision of the Act because Ameren's transportation customers have already been treated as retail customers in the spending limit calculation approved by the Commission. It is only the wholesale commodity cost paid to non-certified alternative gas suppliers by those retail transportation customers that has been excluded, which Ameren argues makes absolute sense in that the gas spending limit should not be affected by what is, in effect, a third party cost.

Although ELPC and AG argue that Ameren and the Commission improperly excluded transportation customers, as a class, from the spending limit calculation, and only subsection (m) customers should be excluded, the evidence in the record establishes that the Commission approved a natural gas spending limit that included transportation customers, as the delivery service charge collected from transportation customers was included in the natural gas spending limit calculation. As such, Ameren asserts that ELPC's and AG's arguments as to whether subsection (m) customers should be the only class of customers excluded from the spending limit is irrelevant, creates needless confusion, and should be disregarded.

While ELPC argues that it was improper for the Commission to consider legislative history when it issued its final Order, Ameren avers that the Commission determined that the Act is ambiguous, and therefore was correct in referring to the legislative history.

Further, Ameren opines that the AG's contention that the Act's requirements for Self Directing Customers ("SDCs") is inconsistent with Ameren and Staff's interpretation of the spending limit is just not relevant to the issue at hand. Ameren states that because the Act contains separate requirements for SDCs and utilities does nothing to advance the analysis as to how to calculate the spending limit under subsection 8-104(d) (which applies only to utilities).

Ameren also disagrees with the AG's assertion that the Commission has significantly reduced Ameren's ability to provide cost-effective energy efficiency programs, by approving a spending limit calculation that, Ameren argues, was supported by the law and the record evidence. Ameren complains that the AG now demands, without citing any evidence to support its argument, the Commission not only reverse its approval of a spending limit that was agreed to by the only parties who submitted evidence on the issue (Ameren and Staff), but impose additional obligations on Ameren that have absolutely no basis in law. Ameren asserts that the AG has lost sight of the fact that the Commission has done exactly what the law requires of it: review the evidence contained in the record and approve a spending limit that comports with the law.

Ameren notes that ELPC also argues the Proposed Order in Peoples/North Shore supports its position that the Commission should reverse itself and order Ameren to recalculate its natural gas spending limit. Ameren avers that ELPC even goes so far as to repeatedly, and inaccurately, imply that the Proposed Order in Peoples/North Shore reflects the final findings of the Commission, when it actually reflects the findings contained in the Administrative Law Judge's ("ALJ") Proposed Order. Ameren opines that ELPC's argument that the Proposed Order in Docket No. 10-0564 binds the Commission in this docket falls far short.

Ameren submits that the premise that the Proposed Order in Peoples/North Shore supports ELPC's position is incorrect. Ameren states that the Proposed Order indicates that the "Utilities are directed to recalculate spending limitations in accordance with the interpretation of Section 8-104 advanced by Commission Staff and Intervenors," when Staff and Intervenors actually proposed different approaches. Ameren indicates that the Proposed Order also states, "the Commission finds that Staff's calculation of the rate impact cap is consistent with Section 8-104 of the Act." Ameren notes that Staff indicates in its Initial Brief on Rehearing, this, at best, suggests the ALJ in Peoples/North Shore intended to reach a similar conclusion reached by the Commission in the instant docket, and not the conclusion advanced by ELPC and AG.

Ameren also notes that, at the time of the filing of its brief on rehearing, there is no final Order in Docket No. 10-0564. On this point, Ameren agrees with Commissioner O'Connell-Diaz who stated, "for a party to assert that a proposed Order is somehow authority for the Commission to look at, is premature and inappropriate." Commission Bench Minutes, Feb. 9, 2011, p. 33, lines 8-11. Ameren further argues that even when the Commission issues the final Order in Docket No. 10-0564, that too is not binding, as

the Commission must take each docket on its own. See Mississippi River Fuel Corp. v. Illinois Commerce Commission, 1 Ill. 2d 509, 513 (1953) ("The concept of public regulation includes of necessity the philosophy that the commission shall have power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding.") Here, the Commission reviewed the timely filed evidence and arguments and determined that the natural gas spending limit, calculated by Ameren and agreed to by Staff, warranted approval, which Ameren believes should be affirmed on rehearing.

B. Staff

While ELPC argues the final Order should be amended to require Ameren to recalculate its spending limits based on the amounts paid for gas by all retail customers without exclusion, Staff argues the final Order is correct and that for purposes of calculating the spending caps, "amounts paid by retail customers in connection with natural gas service" should exclude Ameren's large transportation customers who do not purchase their gas from the utility, but who transport the gas or use other services of the utility. Staff submits the final Order is supported by the statute and consistent with the legislative intent as reflected in the legislative history, and therefore should not be modified with respect to this issue.

Staff notes that subsection 8-104(c) of the Act states, in part:

> (c) Natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009 multiplied by the applicable percentage.

(220 ILCS 5/8-104(c))

Staff states that the subsection (m) referenced in this statutory excerpt deals with certain customers who, if their applications are approved by the Department, are exempt from paying into and directly participating in the efficiency programs offered by the utility. Thus, aside from the subsection (m) exclusion, the Act clearly provides that the basis for computing natural gas savings requirements begins with the total amount of gas delivered to retail customers.

Subsection 8-104(d) of the Act states, in part:

> (d) Notwithstanding the requirements of subsection (c) of this Section, a natural gas utility shall limit the amount of energy efficiency implemented in any 3-year reporting period established by subsection (f) of Section 8-104 of this Act, by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with

> natural gas service to no more than 2% in the applicable 3-year reporting period.

(220 ILCS 5/8-104(d))

Staff notes that the degree to which Ameren may spend ratepayer funds on its natural gas energy efficiency programs is limited by this statute, and it is apparent from the above statutory language that, over the course of each three year plan, expenditures should be limited to 2% of the "amounts paid by retail customers in connection with natural gas service."

While ELPC asserts that the two statutory sections cited above both reference "retail customers" and that the same meaning should be given to this term in both sections, Staff disagrees. Staff states ELPC's interpretation is an oversimplification of the language used in these statutory provisions and is inconsistent with legislative intent. Staff's view is that the computation of the natural gas plan spending limit in Section 8-104(d) should start with a definition of "amounts paid by retail customers in connection with natural gas service" that excludes amounts paid by large customers to non-certified alternative gas suppliers.

While the statute is clear that expenditures should be limited to 2% of the "amounts paid by retail customers in connection with natural gas service," Staff avers that it is not clear how the "amounts paid by retail customers in connection with natural gas service" should be computed. In support of this assertion, Staff cites a portion of the legislative debate that took place on Senate Bill 1918, which was the bill that ultimately led to the inclusion of 8-104 in the Act. In particular, pages 181-182 of the transcripts of the House debate, which took place on May 28, 2009, include the following exchange:

> ***
>
> Reitz: . . . On the gas efficiency provisions, I'd like to make sure I understand how the charges to customers will be calculated. There are some customers, such as merchant electric generators, who purchase all or part of their gas at wholesale and then transport that gas over the distribution system of the local gas utility. When the utility is calculating the charge to customers, will the utility include the cost of the gas that is purchased by the user at wholesale?
>
> Flider: No.
>
> Reitz: Stated differently, does the legislation intend to cover for purposes of assessing charges, delivery service revenues and retail gas commodity purchases, but exclude wholesale gas purchases?
>
> Flider: Yes.

> Reitz: So, what is excluded is the wholesale commodity cost; the utility's cost for transportation for that wholesale commodity is included, right?
>
> Flider: That's correct, yes.
>
> Reitz: And you were talking about excluding only wholesale commodity purchases; retail gas purchases from public utilities and certified alternative gas suppliers are included, right?
>
> Flider: Yes.

Staff states that the documented exchange between Representatives Reitz and Flider shows that Representative Reitz sought clarification about what amounts paid by retail customers would be excluded and what amounts paid by retail customers would be included in connection with the computation of energy efficiency program charges, stating, "On the gas efficiency provisions, I'd like to make sure I understand how the charges to customers will be calculated." Staff argues that in the course of the exchange, it becomes clear that the bill's sponsor intended that the costs for this computation would exclude "wholesale commodity cost," but would include "the utility's cost for transportation for that wholesale commodity," along with "retail gas purchases from public utilities" and "retail gas purchases from certified alternative gas suppliers."

Staff avers that it is a well-established principle of statutory construction that "In aid of the process of construction we are at liberty, if the meaning be uncertain, to have recourse to the legislative history of the measure and the statements by those in charge of it during its consideration by the Congress." (United States v. Great Northern Ry., 287 U.S. 144 (1932)) Staff notes that explanatory legislative history is also consulted for narrowly focused explanation of the meaning of specific statutory language that a court believes is unclear, and that in Illinois Courts, "a statute's legislative history and debates are '[v]aluable construction aids in interpreting an ambiguous statute.'" (Krohe v. City of Bloomington, 798 N.E.2d 1211, 1214 (Ill. 2003) (quoting Advincula v. United Blood Servs., 678 N.E.2d 1009, 1018 (Ill. 1996)) Further, Staff notes that a statute is ambiguous "when it is capable of being understood by reasonably well-informed persons in two or more different senses." (In re B.C., 176 Ill. 2d 536, 543, 680 N.E.2d 1355, 1359 (1997)) In this instance, Staff submits that there is no better evidence of the statutory language being ambiguous and requiring explanation than the lawmakers themselves finding it necessary to have the meaning of the terms clarified through a colloquy on the House floor. Thus, Staff finds it appropriate to rely on the exchange between Representatives Reitz and Flider to better explain the legislative intent of Section 8-104(d).

Staff admits it is somewhat unfortunate that Representative Reitz, while trying to clarify which costs should be excluded, uses the term "wholesale," as the use of the term "wholesale" could lead one to think that he is not even talking about retail customers. However, Staff submits it is clear from the surrounding sentences that this cannot be the case, and it is clear from the context that the only reasonable

interpretation is that “wholesale commodity cost” is being used as shorthand for the cost of gas purchased by a subset of the utility’s retail transportation customers, in particular those non-residential customers who are large enough that non-certified alternative gas suppliers may sell to them but who then use the utility to transport the gas. Pursuant to Article XIX of the Act and Part 551 of the Commission’s rules, Staff states that to serve “residential customers” and/or to serve “small commercial customers” (non-residential customers that use less than 5000 therms of natural gas per year), an alternative gas supplier must be certified by the Commission, while serving non-residential customers that use more than 5000 therms per year does not require certification. As already noted, Staff believes the House debate clearly establishes that gas purchases from the utility and from certified alternative gas suppliers are to be included in the computation of charges, leaving out “wholesale” purchases, which, in context, and by a simple process of elimination, can only mean non-certified alternative gas suppliers.

While ELPC argues that there is no evidence that “wholesale commodity costs” is shorthand for the cost of gas purchased by a subset of the utility’s retail customers, Staff opines that the language used by the legislators references customers who purchase all or part of their gas at wholesale and then transport that gas over the distribution system of the utility that is purchased. Staff notes that ELPC offers no other plausible explanation of what was being discussed by the legislators.

Staff states that according to Ameren’s response to Staff Data Request RZ 1.01, there are no residential or small commercial customers in the Ameren service territory that purchase gas from certified alternative gas suppliers, although Ameren does sell to larger transportation customers (which Staff submits are those whom Representative Reitz calls “wholesale” customers). Staff therefore submits that the correct computation excludes the cost of gas sold by alternative suppliers to larger transportation customers.

Staff also disagrees with ELPC's argument that the Proposed Order in Peoples/North Shore lays out the proper analysis regarding the appropriate calculation of Ameren’s spending cap for its gas programs under Section 5/8-104(d). Staff asserts that ELPC argues, in essence, that a Proposed Order should be given more weight and authority than a final Order voted on and issued by the Commission; and that ELPC would have the Commission ignore an order it has already issued in favor of an ALJ’s Proposed Order that ELPC favors. Staff submits that the final Order regarding this issue was fully laid out in the Commission Analysis and Conclusion. Staff avers that there is clearly a question of what is meant by the phrasing of the statutory section and the legislative history provides useful insight on the intent of the statutory provision. Staff submits that if there was not some disagreement on what the language meant, there would not be two interpretations by the Commission and the ALJ.

While ELPC argues that the Proposed Order in Peoples/North Shore rejects the conclusion from page 45 of the final Order in this docket, Staff disagrees with this interpretation. Staff notes that the ALJ’s Proposed Order in Peoples/North Shore states: “in calculating the savings requirements, the Commission finds that Staff’s calculation of the rate impact cap is consistent with Section 8-104 of the Act.” (Docket

10-0564, ALJ Proposed Order, at 41) That Staff position is that the computation of the natural gas plan spending limit should start with a definition of "amounts paid by retail customers in connection with natural gas service" that excludes amounts paid by large customers to non-certified alternative gas suppliers. Clearly, except for the names of the utilities, Staff opines that this is precisely the same conclusion reached by the Commission with respect to Ameren at page 45 of its final Order in the instant docket.

Staff states that ELPC also asserts that the ALJ in the Peoples/North Shore Proposed Order was correct in finding that the key factor in determining the applicability of Section 8-104 is whether the customer uses the commodity or resells it, although ELPC offers no basis for why this interpretation is any more correct than the Commission's interpretation made in its final Order in this docket. Staff notes that there is no definition of "retail customers" for use in the context of Section 8-104(d) or even Section 8-104(c) of the Act, and suggests that the use of the language "retail customers" has to be considered within the context of the statute itself, so it is possible that more than one interpretation of who may or may not be included as a retail customer can be made. Staff believes the arguments it has made lead to the conclusion that large transportation customers are excluded from the calculation of spending caps. Staff offers no substitute language for the final Order as it maintains the final Order correctly reflects the language and intent of the statute to exclude large transportation customers from the calculation of spending caps.

Staff states that both ELPC's and the AG's analyses in their briefs center on the term "retail customers" as used in Subsection 8-104(c), to the exclusion of the statutory language used in Subsection 8-104(d), and as a result, their arguments are fundamentally flawed by the failure to recognize the significant differences between the statutory language contained in these Subsections.

With respect to the computation of the natural gas savings requirement under Subsection 8-104(c), Staff agrees with ELPC and the AG that the statutory language is unambiguous. Subsection 8-104(c) provides for savings goals based upon the "total amount of gas delivered to retail customers, other than customers described in subsection (m) of this Section…" Aside from the Subsection (m) exclusion, Staff states the Act clearly provides that the basis for computing natural gas savings requirements begins with the total amount of gas delivered to retail customers.

In contrast, Staff submits that the statutory language pertaining to the computation of the spending cap contained in Subsection 8-104(d) is significantly different from the language contained in Subsection 8-104(c). Subsection 8-104(d) states, in part:

> (d) Notwithstanding the requirements of subsection (c) of this Section, a natural gas utility shall limit the amount of energy efficiency implemented in any 3-year reporting period established by subsection (f) of Section 8-104 of this Act, by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with

natural gas service to no more than 2% in the applicable 3‑year reporting period.

(220 ILCS 5/8-104(d))

Staff argues that Subsection 8-104(d) does not require that the spending cap include amounts paid by all retail customers, but rather provides for a spending cap on "amounts paid by retail customers in connection with natural gas service." Staff notes the language does not state all retail customers, but to the contrary, the reference to retail customers is specifically limited to those in connection with natural gas service. Had the General Assembly intended to include all retail customers, Staff submits it would have drafted the statute to omit the description "in connection with natural gas service."

In essence, Staff opines that ELPC and the AG would simply have the Commission replace the language used in Subsection 8-104(d) with that used in Subsection 8-104(c), however the language in Subsection 8-104(d) cannot be ignored. Staff submits that the Commission's final Order correctly reflects that language, and is consistent with the statute and with legislative intent; therefore, the final Order should not be modified with respect to the issue of the calculation of the spending cap.

C. AG

The AG urges the Commission to reject Ameren's calculation of its savings goals, which relies on tortured reading of Section 8-104 as a whole, and the word "retail" in particular. The AG argues that this position is inconsistent and contrary to Section 8-104 of the Act. The AG opines that Section 8-104(c) is very clear as to which customers should be excluded from gas efficiency programs and gas savings goals.

The AG notes that 8-104(c) of the Act provides that natural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section, during calendar year 2009 multiplied by the applicable percentage. The AG avers that Section 8-104(m) of the Act provides a specific application process for disqualifying customers from participation and assessment of charges associated with the energy efficiency programs provided under the Act. The AG indicates that this section also contains a requirement that these self-directing customers establish annual energy efficiency reserve accounts for purposes of participating in efficiency measures, albeit non-utility sponsored measures.

The AG argues that this language makes clear that only these customers are to be excluded for purposes of calculating savings and spending goals, and nothing in the clear language of the statue provides or implies that large volume commodity shall be excluded from utility plan spending and savings goal amounts.

The AG states that the issue as to which gas usage/therms should be excluded from the gas savings and spending calculation is further clarified in Section 8-104(e), which provides that a utility providing approved energy efficiency measures in this State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission. The AG believes that this provision makes clear that all of the utility's customers except those who receive an exemption through subpart (m) of Section 8-104 shall be assessed the energy efficiency cost recovery charges.

In the AG's view, there is no language in Section 8-104 to contradict the clear, limited exemption language of part (m) of Section 8-104, nor any suggestion that a "retail customer" of a local distribution gas company somehow includes only the commodity of residential and small business customers, but not larger commercial customers for purposes of calculating both gas savings goals and spending limits.

In addition, the AG notes there is no evidence that Ameren normally classifies these excluded large volume commercial customers as "wholesale," and there is no justification for asserting these delivery customers are not retail customers of Ameren. Certainly, if small customers purchasing commodity from a third party are considered "retail," the AG states no reason is provided in the Company's tariffs or testimony to suggest that a larger volume customer who purchases gas themselves is somehow "wholesale" rather than "retail."

The AG asserts that the Act, taken as a whole, creates contradictions and illogical conclusions if one were to agree with Staff's and Ameren's interpretation of how to calculate the spending cap. While Staff quotes a colloquy between Representative Reitz and Representative Flider in support of its position, that AG avers that this is simply a tautological question that elicits no new information. Put simply, Reitz has simply asked Flider to confirm whether the term "retail" means that retail is included and "wholesale" excluded. There is no indication of what Flider might consider a wholesale customer, and the context is still in reference to a merchant electric generator. The AG claims this passage, if meant to shed light on what is meant by "wholesale gas purchases" or any portion of Section 8-104, is less than transparent.

While transcripts of legislative debates can be helpful in elucidating vague statutory provisions that are subject to various interpretations, the AG states it is well-settled that when courts are interpreting a statute, the legislature's intent must be ascertained and given effect, and the determination as to intent begins with the plain and ordinary meaning of the statute without resorting to other aids. (Metropolitan Life Ins. Co. v. Washburn, 112 Ill.2d 486,492 (1986)) In addition, the AG notes that it is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject the specific provision controls and should be applied. (People v. Villarreal, 152 Ill.2d 3658, 379 (1992))

The AG argues that the Act is clear when it refers to the "total amount of gas delivered," and to count delivery costs, but not the "total amount of gas" makes no sense. The AG also asserts there is an inconsistency in the Act if these customers' usage is excluded from efficiency spending, but Section 8-104(e) requires collection of revenues for the programs from all customers except those identified in subpart (m).

In addition, the AG notes that the Act makes clear that even those customers of the gas utility who meet the requirements of the exemption provision must still set aside in an account an amount (2% of the customer's gas cost) dedicated to energy efficiency measures, as Section 8-104(m) requires a SDC [self-directing customer] to set aside and certify annual funding levels for an energy efficiency reserve account will be equal to 2% of the customers cost of natural gas, composed of the customer's commodity cost and the delivery service charges paid to the gas utility. The AG avers that Staff and Ameren's interpretation of Section 8-104 would create a new class of customers ("wholesale") with the distinction of being the only Ameren customers who would not have to participate in, and pay for, energy efficiency measures or programs. Since the purpose of subsection (m) is clearly to allow these customers an exemption from the more traditional EEP funding mechanism, the AG believes it makes no sense that the legislature would choose to impose higher charges on them than other customers that can not meet the subsection (m) criteria.

The AG notes that Ameren assumes a slightly different take than Staff on the meaning of Section 8-104(d), arguing, principally, that the value of all of the gas commodity sold by any alternative gas supplier – certified or non-certified – should be excluded. As its fallback argument, the AG states that Ameren relies on the same legislative colloquy as support for the notion that the value of the gas commodity purchased by non-certified alternative gas suppliers should be excluded from the calculation of the gas spending cap. The AG avers this suits Ameren's purposes, given that Ameren currently has no residential and small commercial customers purchasing commodity from certified alternative gas supplier. The AG asserts that the plain language of the Act provides that all of Ameren's customers, except those described in subpart (m) of Section 8-104, shall participate in, help pay for the programs and have their therm usage included in the computation of energy savings, and taken as a whole, the Act supports the inclusion of the commodity purchases of large volume transportation customers within the gas spending cap in Section 8-103. The AG opines that the specific provisions of Section 8-104(c), (d), (e) and (m) simply do not support exclusion of the commodity of large transportation customers.

The AG asserts that Staff and Ameren's interpretation of the legislative history raises clear contradictions with the statute as a whole and the clear meaning of the words in parts (c), (d), (e) and (m) of Section 8-104, as noted above. The AG argues that the Act is clear when it refers to the "total amount of gas delivered" for purposes of calculating the required energy savings, and to count delivery costs, but not the "total amount of gas" when computing the gas spending limits makes no sense. Also, the AG notes there is an inconsistency in the Act if these customers' usage is excluded from

efficiency spending, but Section 8-104(e) requires collection of revenues for the programs from all customers except those identified in subpart (m).

The AG notes that Ameren's principal argument for excluding large volume transportation customers' gas costs from the calculation of the spending cap is that all commodity purchased by alternative gas suppliers should be excluded in the calculation of the gas spending cap. The AG states that Ameren asserts that the reference in subsection (d) to "limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service" necessarily excludes any costs paid by retail customers that are not "in connection" with the natural gas service provided by Ameren, and that "the 'service' rendered by Ameren is the delivery of the third party commodity, not the sales." The AG notes Ameren then concludes "all commodity charges – which deal with the sale of gas by a third-party supplier and are not 'in connection with delivery service' – should be excluded from the spending limit calculation." While Ameren argues this makes sense because the "amount Ameren Illinois spends on energy efficiency programs should not be impacted by the amount a transportation customer contracts with an alternative gas supplier for the sale of gas," the AG disagrees.

The AG states that Ameren's claim that the commodity portion of a customer's bill is not "connected" to natural gas service is illogical. Moreover, the AG notes that rules of statutory interpretation require that those interpreting the language use the plain, ordinary meaning of the word when interpreting a statute. The AG avers that Merriam-Webster's Collegiate Dictionary defines "connection" as "the state of being connected" and "causal or logical relation or sequence," "connected" as "joined or linked together" and "having the parts or elements logically linked together," therefore commodity service is, in fact, "joined or linked together" to delivery service. The AG avers that Ameren's dissection of the phrase "amounts paid by retail customers in connection with natural gas service" to exclude commodity purchases for purposes of setting the spending limit is contrary to the legislative precept that words in a statute be given their plain, ordinary meaning.

The AG recommends that the Commission reject Ameren's proposed calculation of savings goals and plan spending and direct Ameren to properly calculate its gas spending amounts to include all transportation gas delivered by Ameren to end-use customers not falling under the subsection (m) exemption. The AG also urges the Commission to direct Ameren to properly calculate and document all subsection (m) exemptions, including providing explicit information about the number of customers, if any, that have applied for the SDC option, along with the gas load associated with those customers. The AG claims this recalculation would have the effect of increasing spending within the spending cap in a manner that is consistent with the Commission's required calculation of gas savings, thereby providing greater net benefits to Ameren customers.

D. ELPC

ELPC states that it is not clear, and the Commission does not explain, how the legislative discussion cited by Ameren and Staff supports the Commission's interpretation of the statute. ELPC notes the transcript never even mentions transportation customers nor does it define the terms "wholesale" and "retail." In order to reach the conclusion it wants, ELPC claims the Commission would have to assume that Mr. Reitz confused "wholesale" with "retail," and that Representative Flider who is a former Illinois Power executive was confused as well. In reviewing the discussion, ELPC cannot see any evidence that the Representatives were using the term "wholesale commodity costs" as shorthand for the cost of gas purchased by a subset of the utility's retail transportation customers.

ELPC argues that there is a long history of Illinois Supreme Court and Appellate cases that state that it is only appropriate to turn to legislative history when the statutory language is not clear. "The language of the statute is the most reliable indicator of the legislature's objective in enacting a particular law." (Town and Country Utilities v. Illinois Pollution Control Board, 225 Ill. 2d 103, 117, 866 N.E. 2d 227 (2007)) "The statutory language is usually the best indication of legislative intent." (Metro Utility Co. v. Illinois Commerce Comm'n, 262 Ill. App. 3d 266, 274 (1997)) More specifically, "Where the plain language of the statute clearly expresses the legislative intent, we do not need to resort to other interpretive aids, such as Committee Comments." (The People of the State of Illinois v. Charles DeFillipo, 387 Ill. App 3d. 322, 334, 899 N.E. 2d 1135 (2008)) ELPC avers that in this proceeding the statute clearly and unambiguously directs utilities to calculate their spending caps based on the amounts paid for natural gas service by all "retail customers." If the legislature had intended to exclude revenue from transportation customers from the calculation of spending limits it would have done so explicitly. Thus, in this instance ELPC believes it was improper to turn to the legislative history.

ELPC asserts that the Commission's Proposed Order in Peoples/North Shore lays out the appropriate analysis. In that case, ELPC states the Commission found that the Companies' interpretation of the same legislative colloquy "raises clear contradictions with the statute as a whole and the clear meaning of the words in parts (c), (e) and (m) of Section 8-104." (Peoples/North Shore Proposed Order at 28). The Commission held that "Section 8-104 clearly indicates that exemptions to gas savings and spending targets apply to any customer other than those who qualify under the very specific process outlined in Section 8-104(m)." Thus, the Commission required Peoples and North Shore to recalculate their saving goals and spending limits. As described above, the Order noted that the "key factor" for defining "retail customers" is "whether the customer uses the commodity or resells it." ELPC states the Proposed Order in Peoples/North Shore interprets the statute in the only way that makes sense under the statute.

ELPC states the issue before the Commission on Rehearing is the appropriate calculation of Ameren's spending cap for its gas programs under Section 5/8-104(e),

which requires Ameren to calculate the spending cap based on sales to "retail customers." ELPC notes the Commission held that "retail customers" should include Ameren's large transportation customers for the purposes of calculating the savings goals but exclude the same customers for purposes of calculating the spending cap, while ELPC argues that the spending cap should be based on the amount paid for gas by all retail customers.

Contrary to the claims of Ameren and Staff, ELPC believes the statutory language here is clear and the Commission should not have to consider the legislative history. ELPC notes the Illinois Supreme Court addressed a similar issue regarding interpretation of the term "gross receipts" in an Illinois Power case, where Illinois Power argued that legislative history supported an interpretation of the language different from the plain language in the statute. ELPC argues that in Illinois Power v. Mahin, 72 Ill. 2d 189, 381 N.E. 2d 222 (1978), the Court concluded that you never get to the legislative history when the statutory language is clear.

ELPC states that despite the clear language in the statute, Ameren argues that only delivery costs of gas, not the commodity costs, should be included in the calculation. Similarly, ELPC notes that Staff argues that the calculation of the spending cap should be based on the amount paid by retail customers "that excludes the amounts paid by large non-certified alternative gas suppliers." ELPC avers that in both instances Ameren and Staff add qualifications to the plain language of the statute that bases the calculation on "amounts by retail customers in connection with natural gas service." ELPC notes that despite the fact that the statutory language is clear; both Ameren and Staff claim that the legislative history of the bill supports their position. ELPC opines that both Staff and Ameren's arguments require a significant re-interpretation of the statutory history to make it support Ameren and Staff's positions.

Finally, ELPC argues that even the Commission notes the inconsistency of its interpretation of the statute setting the savings target and spending cap stating, "While this result may seem contradictory at first blush, it is clear to the Commission that this finding comports with the statute in question, and the attendant legislative history as discussed by Staff. ELPC argues however, the Commission should never get to the statutory history; and the statutory history does not say what Staff and Ameren claim it does.

E. Commission Conclusion

The Commission first notes that in the December 21, 2010 Order in this proceeding, it approved a gas plan spending limit for Ameren of $56,641,420 over the three years of the plan. It appears from the Order that this amount was agreed to by Staff and Ameren, and little input was received from any of the other parties to this proceeding on this issue. The evidence in the case in chief, and affirmed by the briefs filed on rehearing, indicate that Ameren and Staff favor different methods of calculating the spending cap, with Ameren excluding the commodity cost associated with all gas transported for alternative gas suppliers, while Staff supports excluding only the

commodity cost associated with gas transported for non-certified alternative gas suppliers. The AG made some more general comments on the spending cap issue suggesting that Ameren seek outside sources of funding, however; it did not propose a figure other than that adopted by the Commission in the final Order.

Following issuance of the Order, ELPC made a request for rehearing on the spending cap issue, claiming that the Order was contrary to the Commission's finding in the Proposed Order in Peoples/North Shore. As an initial matter, the Commission notes that a proposed order is not a final order of the Commission, and that the findings contained in a proposed order are simply recommendations by the Administrative Law Judge. The Commission wishes to emphasize this fact, as it is unclear from the briefs filed by ELPC that it appreciates the difference. This is evidenced by portions of ELPC's Initial Brief on Rehearing, where ELPC, in discussing the Proposed Order in Peoples/North Shore, mentions the "Commission's Proposed Order," the "Commission held that Section 8-104," and the "Commission required."

On rehearing, Staff and Ameren reiterated their previously identified positions on calculation of the gas spending limit, while the AG and ELPC support including the commodity cost associated with gas transported for both certified and non-certified alternative gas suppliers. All parties appear to agree that the gas transported for customers identified in subpart (m) should be excluded from the calculations. The AG and ELPC also suggest the Commission should not refer to the legislative history, claiming the statute is clear and does not require further interpretation. Ameren and Staff both refer to the legislative history to support their interpretations of Section 8-104 of the Act. The Commission is of the opinion that when four parties who regularly appear before the Commission view a statute and develop three different opinions on what that statute means, there is most likely some ambiguity in the interpretation of the statute. The Commission finds it appropriate in this instance to refer to the legislative history in an attempt to determine the Legislature's intent. The Commission notes that the Legislature used similar, but not identical terms in which Section 8-104(c) refers to the "total amount of gas delivered to retail customers," and Section 8-104(d) refers to "amounts paid by retail customers in connection with natural gas service." The Commission believes that had the Legislature intended these terms to mean the same thing, it seems apparent that it would have used identical language.

Ameren suggests that the Commission need not address whether Staff's method or Ameren's method is the appropriate method of calculating the spending limit in this proceeding, as Staff and Ameren presented an agreed amount for the spending cap, despite their different methods. This is apparently due to the fact that Ameren has no residential or small commercial customers who purchase gas from certified alternative gas suppliers. The Commission notes that this agreed amount presented by Ameren and Staff was essentially the only evidence presented quantifying the gas spending limit during this proceeding. Although the AG and ELPC now suggest the Commission order a different amount based on their arguments, the record contains no quantification of what their proposed gas spending limit would be.

The Commission is satisfied based on the evidence and arguments presented that the gas spending limit as set forth in the December 21, 2010 Order was correct. The Commission is of the opinion that based on the language in the statute, and the legislative history presented, the Legislature intended to exclude from the calculation of the spending cap the commodity cost associated with gas transported for certain customers. Neither the AG nor ELPC offer any alternative explanation of the legislative history cited by Ameren and Staff in support of their interpretation of Sections 8-104(c) and 8-104(d). The Commission now must decide whether it is necessary to decide in this proceeding, whether Ameren or Staff is correct in their interpretation of the statute. Because it makes no difference in the final result for this proceeding, the Commission finds it would be premature to make a finding in this proceeding which might influence other dockets, particularly when it appears the issue could be developed more fully by the parties.

It is the Commission's hope that this issue might come before the Legislature before the filing of the next gas savings plans, as clarification from the Legislature would enhance all parties' understanding and handling of this issue.

III. AG/ELPC/NRDC REQUEST FOR CLARIFICATION

On January 4, 2011, the AG, ELPC, and the Natural Resources Defense Council ("NRDC"), collectively ("Movants"), filed a "Motion for Clarification or In The Alternative Application for Rehearing." In this motion the Movants request the Commission clarify the portions of the Order regarding the net-to-gross ratios and the Technical Reference Manual ("TRM"). The Movants believe that modifications are necessary to clarify the intentions of the Commission, and propose suggested language to accomplish the suggested clarification. In the alternative, the Movants requested rehearing on these issues. On January 11, 2011, Ameren filed a response to this request indicating that Ameren did not agree with the need for clarification and felt that the Order was sufficient. On January 20, 2011, the Commission denied the request for rehearing, but held the matter of the request for clarification for future consideration. Following this Commission action, the Administrative Law Judge sent out a ruling directing any party wishing to respond to the request for clarification to do so by January 28, 2011; and any replies thereto were to be filed by February 4, 2011. No party filed any response to the request for clarification, while the Movants filed a reply to Ameren's earlier filed response.

The Commission finds that the Request for Clarification filed by the Movants is well founded and that the changes to the Order suggested by the Movants are appropriate and should be adopted. The Commission finds that Order should be clarified in the following manner.

The seventh paragraph in the "Commission Analysis and Conclusion" beginning at the bottom of page 69 should be modified as follows.

> Generally, the parties agree that the development of a TRM is appropriate. While some parties believe it is appropriate to develop a statewide TRM, others believe, at a minimum, it is premature to develop a statewide TRM. ELPC witness Crandall, for example, recommends that the SAG should take primary responsibility for developing one statewide TRM. ~~Having reviewed the record on this issue, the Commission concludes that it is neither necessary nor appropriate to order a statewide TRM in this proceeding.~~ The Commission directs that Ameren will work with other utilities subject to the requirements of Section 8-103 and 8-104 of the PUA and the SAG to develop a statewide TRM ~~in the future~~ for use in the upcoming energy efficiency three-year plan cycle. This will allow a consistent format to be developed for a TRM. The Commission also accepts Ameren's recommendation that Ameren, as well as ComEd, and the independent evaluators strive to understand differences in evaluation results and to reconcile differences not driven by differences in weather, market and customers.

Additionally, the tenth paragraph of that same section, in approximately the middle of page 70, should be modified as follows.

> As an initial matter, the Commission notes that it finds some of the arguments regarding fixed values, deeming, NTG and related issues to be confusing. ~~The Commission again rejects the AG's recommendation that "the Fixed Values be consistent with the SAG NTG framework. AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd EE case, Docket No. 10-0570." Not only is it somewhat unclear what specifically the AG wants, it is inappropriate to impose the terms of a settlement in another proceeding on Ameren in this proceeding.~~ Despite the confusion, Ameren, Staff, CUB, and NRDC-ELPC appear to agree to some extent that plan savings and cost-effectiveness calculations be made using fixed values for unit savings that apply to at least some standard measures. Among other things, CUB suggests that the Commission policy with respect to deemed parameters for gross measure savings and other parameters should be consistent across utilities. As outlined above, NRDC-ELPC identified specific standard items for which it believes deeming of gross measure savings is appropriate. NRDC-ELPC recommends that the actual deemed values be determined in a separate proceeding. Finally, the Commission notes that the timing for updated fixed value will be addressed separately below in this conclusion.

Finally, a new final paragraph should be inserted at the bottom of page 72, and the existing final paragraph beginning on the bottom of page 72 and carrying over to page 73 should be deleted as shown below.

The Commission finds the NTG framework described above reasonable, would provide consistency with the findings in the ComEd case, Docket No. 10-0570, and it is hereby approved.

~~Turning next to the timing for updating fixed values, the AG expressed some concerns with Ameren's proposal for updating unit savings and NTG ratios, and in response, Ameren modified its proposal. Among other things, Ameren's modified proposal, increases the speed at which new fixed values are implemented. It appears that Ameren's modified proposal, as described above, would effectively mitigate the concerns raised by the AG. Staff recommends that load shape and useful life measures be updated on an ongoing basis along with other items in a TRM. The Commission finds no evidence to support Staff's recommendation and it is therefore rejected. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings and NTG ratios, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0.~~

The remainder of the "Commission Analysis and Conclusion" contained on pages 68-73 of the December 21, 2010 Order, except as explicitly modified above, is hereby affirmed.

IV. STAFF REQUEST FOR CLARIFICATION

On January 19, 2011, Staff filed a "Motion for Clarification," indicating that the Order entered by the Commission on December 21, 2010 had increased the amount of savings Ameren was required to accomplish under its revised gas energy savings plan, however, the Order did not carry this increase over to DCEO's gas energy savings plan. Staff noted that the plan DCEO had initially filed contemplated savings of 22% of the required savings goal, slightly in excess of DCEO's required 20% savings.

Following the filing of the request for clarification by Staff, the Administrative Law Judge sent out a ruling directing any party wishing to respond to the request for clarification to do so by January 28, 2011; and any replies thereto were to be filed by February 4, 2011. The record in this proceeding reflects that no party to this docket took the opportunity to file a response and comment or dispute Staff's suggestion of the need for clarification.

It appears to the Commission from a review of the record, that this issue regarding DCEO's plan was apparently missed by all parties to this proceeding, as no party raised this issue in any of the briefs filed in this docket. The Commission agrees after a review of the record in this proceeding, that Staff has properly identified a portion of the December 21, 2010 Order which must be clarified by the Commission.

The Commission is of the opinion that the most appropriate action to take on this issue, would be to amend the previous Order's approval of DCEO's gas savings plan,

as it does not contemplate satisfying the statutory requirement of 20% of the total gas savings, and direct DCEO to make a compliance filing of a new plan which would satisfy the statute within 30 days of the date of this Order on Rehearing.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, and being fully advised in the premises, is of the opinion and finds that:

(1) The Ameren Illinois Company d/b/a Ameren Illinois is an Illinois corporation engaged in the transmission, sale and distribution of electricity and gas to the public in Illinois and is a public utility within the meaning of Section 3-105 of the Public Utilities Act, an electric utility as defined in Section 16-102 of the Public Utilities Act, and a gas utility as defined in Section 19-105 of the Public Utilities Act;

(2) the Commission has subject-matter jurisdiction and jurisdiction over this proceeding;

(3) the findings of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby incorporated into these findings;

(4) the Order entered in this proceeding by the Commission on December 21, 2010, shall be amended as set forth in the prefatory portion of this Order on Rehearing;

(5) the Illinois Department of Commerce and Economic Opportunity is a state agency that is statutorily obligated, pursuant to 220 ILCS 5/8-104(e) to utilize 25% of a utility's natural gas funding and achieve no less than 20% of the natural gas savings requirements; therefore, pursuant to statute, this portion of the plan is subject to Commission approval before implementation;

(6) the natural gas savings plan as developed by the Illinois Department of Commerce and Economic Opportunity in this proceeding fails to achieve at least 20% of the natural gas savings requirement adopted by the December 21, 2010 Order;

(7) the Department of Commerce and Economic Opportunity shall make a filing within 30 days of the date of this Order providing a revised Energy Efficiency and Demand Response Plan pursuant to Section 8-103 and 8-104 of the Public Utilities Act, which revised plan contains terms and provisions consistent with and reflective of the findings and determinations made in this Order and the December 21, 2010 Order;

(8) except as specifically modified on rehearing, the December 21, 2010 Order is hereby affirmed.

IT IS THEREFORE ORDERED by the Commission that the Order of December 21, 2010, is hereby amended consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that the Department of Commerce and Economic Opportunity is hereby authorized to and directed to make a filing within 30 days of the date of this Order, such filing shall be a revised Energy Efficiency and Demand Response Plan pursuant to Section 8-103 and 8-104 of the Public Utilities Act which revised plan contains terms and provisions consistent with and reflective of the findings and determinations made in this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding that remain unresolved are hereby disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 24th day of May, 2011.

(SIGNED) DOUGLAS P. SCOTT

Chairman